

THE PURPOSE OF A MUELLER REPORT: FOR REFERRAL TO CONGRESS IF HE GETS FIRED

I said some weeks ago that I had finally figured out the point of the report that the Mueller investigation is doing. I lay that out in this TNR piece on what would happen if Democrats win the House but he is fired. While a report would not be necessary if Mueller continues to speak, as he has done, in indictments, it would serve as a vehicle to transfer grand jury information to the House Judiciary Committee rooted in the Watergate precedent.

Mueller's activities thus far have been laid out in plea deals and highly detailed "speaking" indictments, which provide far more information about the actions involved than strictly necessary for legal purposes. But according to the regulation that governs his appointment, at the end of his investigation Mueller must also provide the attorney general with "a confidential report explaining the prosecution or declination decisions reached by the special counsel." Also upon completion of the investigation, if the attorney general overrules an action Mueller wanted to take, he or she must notify the chair and ranking members of the Judiciary Committee.

[snip]

[A] Watergate precedent suggests the House could obtain the report if Mueller were fired.

Some Freedom of Information Act requests have recently focused attention on—and

may lead to the public release of—a report similar to the one Mueller is mandated to complete. It was the report done by Watergate prosecutor Leon Jaworski, referred to as the “Road Map.” The Road Map consists of a summary and 53 pages of evidentiary descriptions, each citing the underlying grand jury source for that evidentiary description. In 1974, Jaworski used it to transmit information discovered during his grand jury investigation to the House Judiciary Committee—which then used the report to kickstart its impeachment investigation.

Before Jaworski shared the Road Map, however, he obtained authorization from then-Chief Judge John Sirica of the D.C. Circuit Court. In Sirica’s **opinion** authorizing the transfer, he deemed the report to be material to House Judiciary Committee duties. He further laid out how such a report should be written to avoid separation of powers issues. The report as compiled by Jaworski offered “no accusatory conclusions” nor “substitute[s] for indictments where indictments might properly issue.” It didn’t tell Congress what to do with the information. Rather it was “a simple and straightforward compilation of information gathered by the Grand Jury, and no more.” Per Sirica, that rendered the report constitutionally appropriate to share with another branch of government.

If Mueller—whose team includes former Watergate prosecutor James Quarles—were fired and he leaves any report behind that fits the standards laid out here, this Watergate precedent should ensure it could be legally shared with the House Judiciary Committee.

If that's right – if that's how Mueller is treating a report while he moves towards any further indictments – then Rudy Giuliani's efforts to focus attention on it would be ironic. Because if Trump is planning a Wednesday morning massacre for November 7, as Rudy's stall on turning in Trump's completed open book test until after the election suggests may be in the works...

President Donald Trump's legal team has prepared written responses to several dozen questions from Special Counsel Robert Mueller but say they won't submit them until after next week's elections and only if they reach a broader agreement with Mueller on terms for the questioning.

Rudy Giuliani, Trump's personal attorney, said in an interview Monday that the answers relate only to whether Trump colluded with Russia during his presidential campaign. He said the legal team is still unwilling to answer any questions concerning obstruction of justice by the president.

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Giuliani said Mueller still could pose additional questions, and he called the ones received so far "a good sample." He said he expects the issue to be resolved by the end of November. Once the election is past, Trump's lawyers are bracing for a flurry of activity from Mueller.

"We have an informal agreement that while negotiating the final details of a Q&A that we wouldn't comment much, we have been sort of quiet," Giuliani said. "But I expect a day after the election we will be in serious discussions with them again, and I have a feeling they want to get it wrapped up one way or another."

Then any work on a report simply ensures there's something that HJC could obtain and use to reconstruct what Mueller has done.